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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/304,406
Filing Date: May 04, 1999
Appellant(s): SIPPLE ET AL.

Wayne A. Sivertson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/15/07 appealing from the Office action mailed 7/31/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Commonly assigned application 09/304,908

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 5,132,992 A	YURT	7-1992
US 5,826,085 A	BENNET	10-1998
US 5,519,435 A	ANDERSON	5-1996
US 6,678,891 B1	WILCOX	1-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 6, 11-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,583,561 to Baker in view of U.S. Patent 5,132,992 to Yurt.

Regarding claim 1, Baker discloses in Figure 1-3 a video on demand system for supplying video data to a plurality subscriber receivers 22 via a program delivery network, the improvement comprising:

A data base storage system 10 (video server 12 coupled to disks 10, column 10, lines 44-46) containing a plurality of video on demand programs;

A temporary video storage memory 38 (figure 2, column 8, line 61-column 9, line 3, 54-58);

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A transaction server 54 (column 10, lines 37-64) responsively coupled to said data base storage system 12, said temporary video storage memory 38, and said plurality of subscriber receivers 22 whereby each of said plurality subscriber receivers requests a different video on from said transaction server and said transaction server spools said different video on data base storage to said temporary demand programs from said video storage memory (column 7, lines 45-55, column 9, lines 1-4); and

A plurality of video servers 12 (figure 3) responsively coupled to said transaction server 54, and temporary video storage memory 38, and said plurality of subscriber receivers 22 via said program delivery network wherein said plurality of video servers are assigned by said transaction server to stream said spooled different video on demand programs from said temporary video storage memory to said plurality of plurality of video servers subscriber receivers via said program delivery network (column 10, lines 37-64).

Baker fails to disclose a plurality of video servers directly coupled to the transaction server and temporary memory directly coupled to the video server and the transaction server.

Yurt discloses a video on demand system in figure 1c in which a remote order processing and item data base (transaction server) 300 is directly coupled to a number of video servers 200, which in turn are coupled to a number of subscriber receivers (column 4, lines 1-13, 64-column 5, line 9), temporary memory 117/118 is directly coupled to both the video server 200 and to the transaction server 300 (figure 1c, 2a,

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column 6, lines 9-22, column 13, lines 29-47) thus spreading out the load generated by a number of users by utilizing a plurality of video servers.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Baker to utilize the direct connection to the transaction server as take by Yurt, for the advantage of spreading out the load generated by a number of users by utilizing a plurality of video servers.

Regarding claim 6, Baker discloses in Figures 1-3, an apparatus comprising:

A plurality of subscribing receivers 22, each capable of providing a plurality of service requests (column 6, lines 12-37, column 8, lines 19-24)

A data base storage system 10 (video server 12 coupled to disks 10, column 20, lines 44-46) containing a plurality of video on demand programs;

A temporary digital storage memory 38 (figure 2, column 8, line 61-column 9, line 3, 54-58);

A transaction server 54 (column 10, lines 37-64) responsively coupled to said data base storage system 12 and said plurality of subscriber receivers 22, capable of receiving said plurality of service requests, accessing said plurality of video programs corresponding to the service requests from said database storage system (column 7, lines 45-55, column 9, lines 1-4); spooling into memory 38 (column 8, line 61-column 9, line 3, 54-58); and

A plurality of video servers 12 (figure 3) responsively coupled to said transaction server 54 and said plurality of subscriber receivers 22 via said program delivery network

wherein said plurality of video servers are assigned by said transaction server to stream said spooled different video on demand programs from said temporary video storage memory to said plurality of plurality of video servers subscriber receivers via said program delivery network (column 10, lines 37-64).

Baker fails to disclose a plurality of video serves directly coupled to the transaction server.

Yurt discloses a video on demand system in figure 1c in which a remote order processing and item data base (transaction server) 300 is directly coupled to a number of video servers 200, which in turn are coupled to a number of subscriber receivers (column 4, lines 1-13, 64-column 5, line 9), temporary memory 117/118 is directly coupled to both the video server 200 and to the transaction server 300 (figure 1c, 2a, column 6, lines 9-22, column 13, liens 29-47 thus spreading out the load generated by a number of users by utilizing a plurality of video servers.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Baker to utilize the direct connection to the transaction server as take by Baker, for the advantage of spreading out the load generated by a number of users by utilizing a plurality of video servers.

Regarding claim 11, Baker discloses a VOD system in figures 1-3 comprising:

Storing means 10 for storing a plurality of video programs (column 20, lines 44-46);

Plurality of generating means 22 for generating a plurality of different requested video on demand signals (column 6, lines 12-37, column 8, lines 19-24);

Identifying means 54 (column 10, lines 53-60) responsively coupled to said generating means and said storing means 10 for identifying a number of said plurality of video programs stored within said storing means corresponding to said plurality of different requested video on demand signals;

Spooling means 38 responsively coupled to said identifying means and said storing means for spooling said corresponding number of said plurality of video programs which said identifying means identifies (column 8, line 61-column 9, line 3, 54-58) and

A plurality of streaming means 18 (column 10, lines 40-44) responsively coupled said spooling means and said receiving means for streaming said spooled number of said plurality of video programs corresponding to said plurality of different requested video on demand signals to said plurality of generating means 22 wherein said spooling means assigns one or said plurality of streaming means to stream said spooled number of said plurality of video programs to said plurality of generating means (column 10, lines 44-64).

Baker fails to disclose a plurality of video servers directly coupled to the transaction server.

Yurt discloses a video on demand system in figure 1c in which a remote order processing and item data base (transaction server) 300 is directly coupled to a number of video servers 200, which in turn are coupled to a number of subscriber receivers

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(column 4, lines 1-13, 64-column 5, line 9), temporary memory 117/118 is directly coupled to both the video server 200 and to the transaction server 300 (figure 1c, 2a, column 6, lines 9-22, column 13, lines 29-47 thus spreading out the load generated by a number of users by utilizing a plurality of video servers.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Baker to utilize the direct connection to the transaction server as taken by Baker, for the advantage of spreading out the load generated by a number of users by utilizing a plurality of video servers.

Regarding claim 12, Baker discloses that a subscriber receives the VOD program on a receiver (decoder 22, column 8, lines 18-41).

Regarding claim 13, Baker discloses that video server 12 or Control server 54 acts as a transaction gateway (column 7, lines 28-55, Figure 4, column 10, line 56-column 11, line 22).

Regarding claim 14, Baker discloses that video server 54 processes subscriber transactions (column 10, lines 54-64).

Regarding claim 15, Baker teaches that the server may be a Unisys mainframe server (Column 8, lines 43-48).

Regarding claim 16, Baker discloses a method of providing video on demand services (figure 8) comprising:

Storing a plurality of video programs in a video storage facility 10 (column 6, lines 37-49);

Receiving a video on demand request from a subscriber 22 at a transaction server 54 (column 10, lines 54-64);

Determining a one of said plurality of video programs corresponding to said video on demand request (column 10, lines 54-64);

Spooling said one of said plurality of video programs corresponding to said video on demand request from said video storage facility 10 into a temporary storage facility 38 (column 8, line 61-column 9, line 3, 54-58) by said transaction server (column 10, lines 29-36, 64-column 11, line 21, control server 54, controls access to the video servers and instructs the video servers 12 when to load a program into memory);

Assigning one of a plurality of video servers 12 responsively coupled to subscriber to stream said one of said plurality of video programs corresponding to said video on demand request to said subscriber (column 10, lines 54-64); and

Streaming said spooled video program from said temporary video server to said storage facility by said assigned subscriber (column 10, lines 54-64).

Baker fails to disclose the transaction server determining which program corresponds to a VOD request.

Yurt discloses that a user may request a program via a remote order processing and item database 300 (transaction server) which processes the content and sends the content to the user (column 11, line 54-column 13, line 48) if the user cannot remember the title of the program, the transaction server is able to determine a number of matching programming by allowing the user to name unique facts about the item (column 12, lines 8-28), thus enabling a user to easily find a program of interest.

Therefore, it would have been obvious to one skilled in the art at the time of invention o modify Baker to utilize the determination features of the transaction server of Yurt, for the advantage of providing an easy way for a user to find programming of interest.

Regarding claim 17, Baker discloses that the VOD stream may be paused in response to a viewer command (column 12, lines 7-17).

Regarding claim 18, Baker discloses that the VOD stream may be rewound in response to a viewer command (column 12, lines 7-17).

Regarding claim 19, Baker discloses in Figure 8, that a user make issue a forward request 132 (column 16, lines 5-9).

Regarding claim 20, Baker discloses that video server 12 performs subscriber accounting and bills a subscriber for a VOD program request (column 7, lines 33-51).

Regarding claim 21, Baker discloses an apparatus for delivering video on demand programs to a plurality of requesters 22 comprising:

a software controlled transaction server 54 responsively coupled to said plurality of requesters 22 which manages an interface between said apparatus and said plurality of requesters (column 10, lines 54-64);

a storage facility 10, which contains a plurality of video programs (column 6, lines 37-49);

a temporary memory 38 (column 8, line 61-column 9, line 3, 54-58) wherein said software controlled transaction server 54 spools a requested one of said plurality of video programs requested by one of said plurality of requesters (column 10, lines 54-64);

a plurality of video servers 12 (column 10, lines 38-44) from which said software controlled transaction server 54 assigns a particular one of said plurality of video servers 12 wherein said particular one of said plurality of video servers streams said requested one of said plurality of video programs from said temporary memory to said one of said plurality of requesters (column 10, lines 54-64).

Baker fails to disclose a plurality of video serves directly coupled to the transaction server.

Yurt discloses a video on demand system in figure 1c in which a remote order processing and item data base (transaction server) 300 is directly coupled to a number of video servers 200, which in turn are coupled to a number of subscriber receivers

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(column 4, lines 1-13, 64-column 5, line 9), temporary memory 117/118 is directly coupled to both the video server 200 and to the transaction server 300 (figure 1c, 2a, column 6, lines 9-22, column 13, lines 29-47 thus spreading out the load generated by a number of users by utilizing a plurality of video servers.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Baker to utilize the direct connection to the transaction server as taken by Baker, for the advantage of spreading out the load generated by a number of users by utilizing a plurality of video servers.

Regarding claim 22, Baker discloses a plurality of video program sources 10 responsively coupled to said software controlled transaction server which stores said plurality of video programs from said plurality of program sources in said storage facility (figures 1-3).

Regarding claim 23, Baker shows in figure 1, a network 20, from which video server 12 streams video from storage 10 to decoder 22.

Regarding claim 24, Baker shows that requests originate from subscriber STB 22 (column 10, lines 56-64).

3. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,583,561 to Baker in view of U.S. Patent 5,132,992 to Yurt in further view of U.S. Patent 5,826,085 to Bennett and U.S. Patent 5,519,435 to Anderson.

Regarding claim 2, Baker discloses a VOD system.

The combination of Baker and Yurt does not disclose a transaction gateway in a middleware environment and a video server frame, stream spooling program coupled to the transaction gateway in a middleware environment, and the use of a PC as a video server.

Bennett discloses in Figure 2, a VOD system with a gateway server 220 coupled to a media server 232 which runs a VOD server 234, all of which are interconnected via a CORBA middleware environment 226 (column 5, lines 9-56). Corba provides an interoperability environment, which enables applications on different machines to be seamlessly interconnected (column 5, lines 34-40).

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Baker and Yurt to utilize the middleware environment of Bennett thus enabling applications on different machines to be seamlessly interconnected.

The combination of Baker, Yurt and Bennet fails to disclose the use of a PC as a video server.

Anderson discloses a VOD system that utilizes a PC 22 connected to a RAID array 12, which uses data stripping (column 4, lines 4-58), thus providing a low cost server, which provides high-speed performance via a RAID array.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Baker, Yurt and Bennet to utilize the PC of Anderson as a video server, for the advantage of providing a low cost server, which provides high-speed performance via a RAID array.

Regarding claim 3, Baker discloses that video server 12 may be a mainframe system (column 8, lines 43-51) and discloses in Figure 3 that the mainframe (video server 12) may be coupled to a transaction server 54 (control server 54, column 10, lines 38-63), additionally the mainframe can act as a transaction server in of itself (column 7, lines 28-55). Additionally Baker discloses that video server 12, which may be a Unisys 2200 series computer, and control server 54 utilize common application software (column 10, lines 28-63), and only discloses utilizing open API's within the applications software to interface with the video library (column 11, lines 1-21), control server 54 must be a Unisys mainframe.

Further, Yurt discloses a transaction server 300 coupled to a number of video servers and subscriber receivers.

Regarding claim 4, Baker discloses that video server 12 may be a Unisys mainframe system (column 8, lines 43-51).

Regarding claim 5, Baker discloses that the transaction server may spool the video (column 8, line 61-column 9, line 3) and that the format can be MPEG 2 (column 7, lines 9-16).

4. Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,583,561 to Baker in view of U.S. Patent 5,132,992 to Yurt in further view of U.S. Patent 5,826,085 to Bennett.

Regarding claim 7, Baker discloses that video server 12 performs subscriber accounting and bills a subscriber for a VOD program request (column 7, lines 33-51).

Regarding claim 8, Baker discloses a VOD system.

The combination of Baker and Yurt does not disclose a transaction gateway in a middleware environment and a video server frame and stream spooling program coupled to the transaction gateway in a middleware environment.

Bennett discloses in Figure 2, a VOD system with a gateway server 220 coupled to a media server 232 which runs a VOD server 234, all of which are interconnected via a CORBA middleware environment 226 (column 5, lines 9-56). Corba provides an interoperability environment, which enables applications on different machines to be seamlessly interconnected (column 5, lines 34-40).

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Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Baker and Yurt to utilize the middleware environment of Bennett thus enabling applications on different machines to be seamlessly interconnected.

Regarding claim 9, Baker discloses that the transaction server may spool the video (column 7, line 45-55) and that the format can be MPEG 2 (column 7, lines 9-16).

Regarding claim 10, Baker teaches that the server may be a Unisys mainframe server (Column 8, lines 43-48).

5. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,583,561 to Baker in view of U.S. Patent 5,132,992 to Yurt in further view of U.S. Patent 6,678,891 to Wilcox.

Regarding claim 25, Baker discloses a VOD ordering system.

The combination of Baker and Yurt fails to disclose enabling a requester to request delivery of a pizza.

Wilcox discloses in figures 30-47 a pizza delivery application, which enables a user to order a pizza, thus enabling a user to order a pizza without making a telephone call.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Baker and Yurt to include the pizza-ordering interface of Wilcox, thus enabling a user to order a pizza without making a telephone call.

(10) Response to Argument

Arguments with respect to claims 1, 6, and 11-24:

Appellant argues that Baker does not desire the advantage of spreading out the load generated by a number of users by utilizing a plurality of video servers, but instead teaches the advantages of using a large mainframe computer system instead. By utilizing the same mainframe computer to access, spool and stream the requested program without any anticipated need for spreading out the load as alleged by the examiner. Further the Examiner fails to even mention his obligation to show reasonable likelihood of success and the examiner cannot show it because the approaches of Baker and Yurt are mutually exclusive (pages 20-21).

Appellants cited portions of Baker are silent with regards to the use of multiple servers; they neither specifically promote, nor discourage the use of multiple servers. There is simply no text within the reference, which indicate that multiple servers could not be utilized to spread out the load on the server. Yurt provides an advantage by utilizing a plurality of servers, see column 11, lines 50-53, by increasing the number of users, which can access the databases.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Baker to utilize the direct connection to the transaction server as take by Baker, for the advantage of spreading out the load generated by a number of users by utilizing a plurality of video servers, thereby providing improved response times for the users which results in a better user experience.

Further, the Examiner has responded to Appellant's arguments with regards to likelihood of success in the previous Office Actions.

Per MPEP 2143.02 and as the Examiner has provided motivation and demonstrated obviousness to combine the references in the previous office action and repeated below, and as the electrical arts are predictable arts, and the Applicant has provided no evidence that suggests there is no reasonable expectation of success, the Examiner has carried the initial burden of factually supporting the prima facie conclusion of obviousness. Further, as Baker is silent with regards to promoting the use of, or any explicit teaching against utilizing multiple servers, the Examiner has demonstrated a reasonable expectation of success.

Appellant argues that claim 1 requires that spool is accomplished by the transaction server and that streaming is accomplished by the plurality of video servers. In Baker both of these functions are accomplished by the same entity, video server 12. In the claimed invention both the transaction and plurality of video servers handle video information. Though in baker, both the transaction server and control server 54 can

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handle subscriber requests, control server 54 cannot handle video data, and applicant points to column 10, lines 50-60 of Baker for support. (pages 21-22)

Regarding Appellant's argument, the Examiner disagrees. At column 10, lines 50-60, Baker teach utilizing a load balancing by control server 54 for the video servers. While this cited section does not teach video handling by the control server, neither does it specifically state, as alleged by Appellant, that it does not handle video.

While Baker does disclose a plurality of video servers, the rejection does not rely upon these passages to teach the features of "a plurality of video servers directly coupled to the transaction server", instead these features are taught by Yurt (column 4, lines 1-13, 64-column 5, line 9), with Baker merely relied upon to teach the presence of a number of video servers. Applicant's cited portions of Baker are silent with regards to the use of multiple servers. Yurt provides an advantage by utilizing a plurality of servers, see column 11, lines 50-53, by increasing the number of users, which can access the databases. Therefore, it is Baker, in combination with Yurt, which is relied upon to teach the independent claims.

Appellant argues that the Examiner erroneously addressed direct coupling by relying upon a remote order processing and item database 300, which is connected via a transmission system 100 which may be a dial-up network. Further it is disingenuous for the examiner to allege that a dial-up network constitutes the claimed direct coupling (pages 22-23).

Regarding Appellants arguments, there seems to be some confusion by the Appellant. Claim 1, section d requires direct coupling by the video servers to the transaction server and temporary video storage memory and responsively coupled to the plurality of subscriber receivers. As correctly noted by the Appellant, a user of the transmission and receiving system of Yurt accesses transmission system 100 by calling a phone number or by typing commands into a computer. The examiner equates this to the responsively coupled functionality between a subscriber receiver and the transaction server required by the claim. This cited portion is with regards to users, there is no mention of a dialup network, at column 3, lines 54-58 being the network between the video servers and transaction server.

The claim requires a direct coupling between the transaction servers and plurality of video servers. The Examiner has not relied upon a dialup network to teach these features. Looking at column 16, lines 4-15, Yurt discloses that the distribution channels may be common telephone service, ISDN, broadband ISDN, DBS, cable television systems, Microwave and MAN (metropolitan area networks). Yurt does not teach that a dialup interface is utilized to distribute programming. Therefore the examiner is not alleging that a dialup network constitutes the claimed direct coupling, and the combination of Yurt and Baker is appropriate.

Further, the Examiner equates the direct coupling to be the connection of video servers 200 to the server 300 via transmission system 100 as there are no intermediate components disclosed between the two elements. Further the claim does not require

that the devices be situated in the same room, to be a direct coupling. The claim is silent as to whether a single cable between an Input/Output port on each server direct coupling. The broadest possible reasonable interpretation of the term "direct coupling" by the examiner is a connection between two servers with no intermediate devices in between. Neither Yurt nor Baker disclose any such intermediate devices, and as such meet the definition of "direct coupling."

Appellant argues that Baker's control server 54 cannot access video programs from the data base storage system, only video server 12 can perform such access. Furthermore, main storage unit 38 is located within video server 12 and therefore cannot be directly accessed by control server 54. The alleged combination of Baker with Yurt is particularly confusing because the remote element 300 is certainly not directly coupled to anything. (pages 24-25)

Regarding Appellant's argument, the examiner disagrees. As discussed above, the Examiner equates the direct coupling to be the connection of video servers 200 to the server 300 via transmission system 100 as there are no intermediate components disclosed between the two elements. Further the claim does not require that the devices be situated in the same room, to be a direct coupling. The claim is silent as to whether a single cable between an Input/Output port on each server direct coupling. The broadest possible reasonable interpretation of the term "direct coupling" by the examiner is a connection between two servers with no intermediate devices in between.

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Neither Yurt nor Baker disclose any such intermediate devices, and as such meet the definition of "direct coupling."

From webopedia.com: <http://webopedia.com/TERM/s/spooling.html>

Spool: Acronym for *simultaneous peripheral operations on-line*, *spooling* refers to putting jobs in a buffer, a special area in memory or on a disk where a device can access them when it is ready. Spooling is useful because devices access data at different rates. The buffer provides a waiting station where data can rest while the slower device catches up.

The claim merely requires that the transaction server is coupled to a temporary memory for the video programs and that the transaction server spools the programs from database storage to the temporary memory. The claim does not require that the temporary memory reside in the transaction server, nor that the transaction server loads the video programs itself. Merely transmitting a request to a database to load the programs into a temporary memory (irrespective of location) would meet the claim limitation. As Yurt is relied upon to teach direct coupling to the temporary storage, the above limitation is met through the combination of Baker and Yurt.

Appellant makes similar arguments with regards to claims 11 and 12 as the above arguments. (Page 25).

The Examiner has addressed the arguments above with respect to claims 1 and 6.

Appellant argues that the Examiner's discussion that video server 12 or control server 54 acts as a transaction gateway is legally irrelevant as the Examiner has found that control server 54 of Baker is the claimed identifying means in his rejection of claim 11. Further the Examiner, in rejection claim 2, explicitly admits that the combination of Baker and Yurt does not disclose a transaction gateway. Further with regards to claim 14, the Examiner confusing states that video server 54 processes subscriber transactions (pages 26-27)

Regarding Appellant's argument, the Examiner listed video server 12 performing the claimed functionality in the alternate. As correctly noted by the Appellant, control server 54 is relied upon to teach that function. As correctly noted by applicant, video server 54 should be labeled control sever 54 in the rejection. Further, column 10, lines 54-65, explicitly states that server 54, may receive viewer service requests from telephone answering equipment, coordinate access to the multiple video servers to the video library and accumulates billing information. This clearly teaches processing means for processing subscriber transactions.

As for the second statement, the Applicant has selectively presented portions of the Examiners rejection to make misleading statements, by neglecting to quote both the rest of the sentence and the rest of the claim. Claim 2 contains different language than claim 13. Notably, claim 2 requires a "a transaction gateway software module operating in a middleware environment". Claim 13 is completely **SILENT** with regards to these

features. Thus there was no admission by the part of the examiner of no teaching of a transaction gateway.

Applicant argues that the Examiner has ignored the cited portions of the claims in claims 15, 17-20, attributing features to server 54 when they are taught by video server 12 (pages 27-30).

Regarding applicant's argument, applicant's own specification, teaches that transaction servers and the video server may in fact be the same device (see abstract). Baker teaches that video server 12 may perform similar functions as the control server 54 when it comes to handling subscriber requests, thus the teachings are proper.

Appellant argues that Baker teaches that video server 12 both spools and streams the program, and that Baker has no discussion about software of control server 54 (page 30).

The Examiner has previously addressed the arguments with respect to the control server spooling the video data.

Webopedia.com defines software as: Computer instructions or data. Anything that can be stored electronically is software. The storage devices and display devices are hardware. <http://webopedia.com/TERM/s/software.html>

Baker inherently utilizes software in its control server as the directions, which dictate how the server performs, are required, and the above definition states that

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computer instructions or data constitutes software. Therefore Baker teaches this element of the claims

Arguments with respect to claims 2-5

Appellant argues that the Examiner has made a broad conclusatory statement in the combination of Bennet with Baker and Yurt, and the combination is improper. Further that combining Baker with Bennet is improper as Baker states as its object to use a high performance enterprise computer system. (pages 32-33).

Appellant argues that the combination does not meet all the claim limitations as figure 2 of Bennet shows video services 235 contains VOD service 234 but does not show any VOD server (page 34). Applicant makes similar arguments with regards to claims 4-5 as in the above sections.

Regarding Appellant's argument, Baker does not teach all video handling operations being preformed by a single mainframe computer (see rejection). Further, applicant has apparently ignored the advantages Bennet teaches. Namely that CORBA provides an interoperability environment, which enables applications on different machines to be seamlessly interconnected (column 5, lines 34-40). This seamless interconnection is the motivation to combine Baker and Yurt with Bennet. Further, with regards to the combination of Baker, Yurt and Bennet with Anderson, that the high performance server Baker teaches away from the combination, Bennet discloses the

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advantages of utilizing a high speed RAID array, which may be utilized by a low cost server. Baker is silent with regards to the cost of the server, and Bennet teaches the advantages of utilizing a RAID array, and thus the motivation to combine is proper. RAID arrays are typically utilized in high performance servers because of the high performance such a configuration offers. Thus the addition of Bennet provides the advantages of low costs, and seamless interconnections, which provide monetary savings to a VOD service provider and performance improvements through a seamless interconnection.

Claim 2 is directed to software modules. As correctly noted by applicant, Bennet teaches software modules. Yurt and Baker are relied upon to teach servers. Further a server of some sort is required, that is a computer, which provides VOD data to a requesting device, in order to run a VOD service. Thus the combination teaches each and every element of the claims.

The Examiner has addressed the arguments with regards to claims 4-5 in the previous sections.

Arguments with respect to claims 7-10:

The Appellant makes arguments with regards to claims 7-10 which are similar to the arguments with regards to the independent claims.

The Examiner has addressed these arguments in the above section.

Arguments with respect to claim 25:

Appellant argues that the rejection of claim 25 contains a conclusory statement. Also the Examiner fails to show reasonable likelihood of success (page 27).

Appellant has failed to substantiate Applicant's claim that there is no Expectation of Success beyond a simple statement. Per MPEP 2143.02 and as the Examiner has provided motivation and demonstrated obviousness to combine the references in the previous office action and repeated below, and as the electrical arts are predictable arts, and the Applicant has provided no evidence that suggests there is no reasonable expectation of success, the Examiner has carried the initial burden of factually supporting the prima facie conclusion of obviousness.

In this case Wilcox teaches the distinct advantage of enabling a user to order a pizza without making a phone call. This provides an easy way to order pizza without requiring a user to walk to the phone. This is an extremely convenient way for a user to satisfy their hunger, without having to leave the comfort of one's own couch. Therefore the combination is proper and teaches each and every element of the claims.

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(11) Related Proceeding(s) Appendix

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

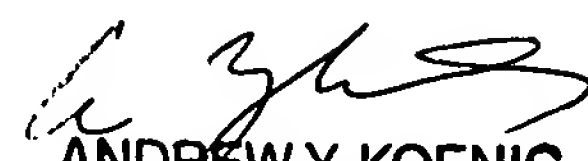

Hunter Lonsberry

Primary Examiner


Art Unit 2623

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